IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 858 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMT.KALPANA JAYESHKUMAR THAKKAR

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 858 of 2004

MR PJ KANABAR for Petitioner No. 1-2

MR KP RAVAL ADDL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 25/04/2005

ORAL JUDGEMENT

The present petitioners have filed this Revision

Application under Section 397 read with Section 401 of the Code of Criminal Procedure challenging the judgement and order dated 6.11.2004 passed by the learned Additional Session Judge & Fast Track Court No. 11, Vadodara in Criminal Revision Application No. 251 of 2004, whereby, the learned Additional Sessions Judge has quashed and set aside the judgement and order dated 27.8.2004 passed by the learned JMFC, Traffic Court, Vadodara passed in Criminal Case No. 120 of 2003, whereby, the learned JMFC has convicted the respondent and ordered to suffer SI for 23 months and also passed an order that if the respondent deposit Rs.20,700/-, then, the respondent be released.

2. Brief facts of the case is that the present petitioner has filed Criminal Misc. Application No. 421 of 2002 before the Court under Section 125 of the Code of Criminal Procedure and after recording of evidence and hearing of both the parties, the Court has passed an order to pay Rs.450-00 towards maintenance to the present petitioner NO. 1 and Rs.400-00 towards maintenance to the present petitioner No. 2 - minor daughter of petitioner No. 1 and respondent No. 2 from the date of application. As the respondent No. 2 has not deposited any amount towards the maintenance as per the order passed by the learned JMFC, Baroda, present petitioners preferred an application under Section 125 (3) of the Code of Criminal Procedure before the learned JMFC, Baroda, which is numbered as Criminal Case No. 120 of 2003. As the respondent No. 2 has not paid amount towards the maintenance, learned JMFC, Vadodara has passed an order against the respondent No. 2 and ordered to suffer SI for 23 months or to pay Rs.20,700/- and also ordered that if the respondent No. 2 paid the amount, the jail authority is directed to release the respondent No. 2 immediately from the jail. Against the said order, the respondent No. 2 preferred Revision Application before the learned Additional Sessions Judge & Fast Track Court No. 11 and after hearing both the parties, the learned Additional Sessions Judge & Fast Track Court No. 11 has allowed the revision application vide judgement and order dated 6.11.2004 and set aside the order passed by the learned JMFC, Vadodara dated 27.8.2004. Against the said order dated 6.11.2004, the present petitioners have filed the present revision application.

3. Heard Mr. Kanabar, learned advocate for the petitioners and Mr. K.P. Raval, learned Addl.P.P. for the respondent No. 1 State of Gujarat. Though, Rule was served to respondent No. 2, he neither remained present

before this court nor represented through an advocate.

4. During hearing Mr. Kanabar, learned advocate for the petitioners has taken me through the order passed by the learned JMFC as well as learned Additional Sessions Judge and the documents attached with the memo of revision application. He has submitted that the learned Additional Sessions Judge has not properly appreciated the evidence on record and wrongly passed the impugned order and prayed that the revision application is required to be allowed.

5. I have gone through the judgement under challenged passed by the learned Additional Sessions Judge & Fast Track Court No. 11, Vadodara. It is held by learned Additional Sessions Judge in light of the judgement of the Apex Court in case of SHAHADA KHATOON AND OTHERS VS. AMJAD ALI AND OTHERS, reported in 2000 (1) Crimes 12 (SC), that lower court can impose only one month imprisonment and hence, the order passed by the learned JMFC of imposing 23 months SI is illegal and improper and only on this ground, the revision application was allowed by the learned Additional Sessions Judge. I have also gone through the said judgement relied on by the learned Additional Sessions Judge.

Section 125 (3) of the Code of Criminal Procedure reads as under :-

> "If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made."

From a plain reading of this Section, it is crystal clear that Court can impose maximum one month sentence for arrears of one month's maintenance amount. In this case also, the respondent No. 2 has not paid maintenance of 23 months and hence, the lower court has imposed 23 months imprisonment under Section 125 (3) of the Code of Criminal Procedure and the respondent No. 2 has stated on oath before the Court that he is not able to pay maintenance amount nor he will be able to pay the maintenance amount in future. This court has gone

through the judgement delivered by the Apex Court and this court is of the opinion that the learned Appellate Judge has misread the said judgement and misinterpreted the same and come to the wrong conclusion that lower court cannot impose more than 1 month's sentence. This court is also of the view that the learned JMFC has rightly passed the order of 23 months imprisonment for 23 months' maintenance amount.

6. Mr. Kanabar, learned advocate for the petitioners has also placed reliance on the judgement reported of Rajasthan High Court reported in 1988 (2) Crimes p.45, in case of KASHMIR SINGH VS. KARTAR KAUR. It is held by the Hon'ble Court that the maximum sentence that can be ordered under sub-sec. 3 of Section 125 is one month for each month's allowance due or one month for a part of each month's allowance. The maximum to the extent of one month is not provided under this provision. The maximum one month is with reference to each month's or part of each month's allowance. The term of imprisonment has a relation with the amount due in relation to a particular month whether the whole of the month's allowance is due or part of the month's allowance is due. In that situation the term of imprisonment may extend to one month.

7. In light of this judgement, the lower court i.e. learned JMFC has rightly passed the order against the respondent No. 2 and as discussed above, the learned Additional Sessions Judge & Fast Track Court No. 11, Vadodara has committed an error in coming to the conclusion that the lower Court cannot pass order of sentence for more than one month for non compliance with the order of maintenance passed by the lower court. This court is of the view that the learned JMFC has rightly passed the order and present revision application is required to be allowed.

8. For the foregoing reasons, the revision application is allowed. The judgement and order passed by the learned Additional Sessions Judge & Fast Track Court No. 11, Vadodara dated 6.11.2004 passed in Revision Application No. 251 of 2004 is hereby quashed and set aside and judgement and order passed by the learned JMFC, Vadodara dated 27.8.2004 in Criminal Case No. 120 of 2003 is hereby confirmed. Rule is made absolute in above terms.

(M.D. Shah, J.)
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